Rel: March 22, 2024

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2023-0183

Morgan County Board of Equalization

v.

Indorama Ventures Xylenes & PTA, LLC

Appeal from Morgan Circuit Court
(CV-2017-900393)

SC-2023-0184

Morgan County Board of Equalization

v.

Indorama Ventures Xylenes & PTA, LLC

Appeal from Morgan Circuit Court
(CV-2018-900457)

MITCHELL, Justice.

These consolidated appeals arise from a dispute over the amount of ad valorem taxes owed by Indorama Ventures Xylenes & PTA, LLC ("Indorama"), for the personal property at a petrochemical plant that it owns in Morgan County. For both the 2017 tax year and the 2018 tax year, the Morgan County Revenue Commissioner assessed Indorama's personal-property value at nearly 1.5 times the amount that Indorama had paid for the plant, which Indorama challenged before the Morgan County Board of Equalization ("the Board"). After the Board affirmed the Commissioner's assessments, Indorama appealed the decisions to the Morgan Circuit Court.

Following a nine-day bench trial, the circuit court entered a judgment for Indorama and held that the fair market value of the property was roughly $150 million less than the Board's appraisal. The

Board now appeals to this Court, arguing that the circuit court's valuation was contrary to the evidence and violated Alabama law. We affirm the judgment.

Facts and Procedural History

A. Indorama Purchases the Plant

In 2000, British Petroleum p.l.c. ("BP") acquired a petrochemical production plant in Decatur. By 2014, BP had decided to sell the plant if it could do so for a "suitable price," which BP estimated to be about $454 million. That estimate included the value of real property, taxable personal property, nontaxable personal property, and working capital.[1] A handful of companies expressed interest in purchasing the plant, including Indorama, a Decatur-based company that produces petrochemicals. After several months of bidding, BP accepted Indorama's bid of $322 million, a price that excluded working capital. Indorama then negotiated the final purchase price, excluding working capital, down to $298,462,000.

[1]Working capital is generally calculated as "[c]urrent assets (such as cash, inventory, and accounts receivable) less current liabilities." Black's Law Dictionary 258 (11th ed. 2019).

After acquiring the plant in 2016, Indorama hired Ingo Schneemann to a prepare a Purchase Price Allocation Report ("PPAR"), which determined the fair value of the plant's assets as of the date of acquisition for financial-reporting purposes. Schneemann was a managing director at Duff & Phelps LLC, a global corporate-finance and valuation advisory firm. Schneemann prepared the report according to industry standards and used three different approaches -- cost, market, and income -- to value the assets. He estimated the fair value of the personal property at the plant to be $346 million, a figure that included nontaxable personal property.

After Schneemann completed the PPAR, Indorama hired a certified public accountant to prepare its tax return for the 2017 tax year. The accountant calculated Indorama's personal property to have a taxable value of $297,527,700. That figure relied on the PPAR to calculate the total value of Indorama's personal property and adjusted down for nontaxable pollution-control equipment and depreciation.

Indorama filed its tax return with the Morgan County Revenue Commissioner's Office, but the Commissioner rejected the valuation and assessed the property at $449,682,078. The Commissioner arrived at

that figure using the "mass appraisal" method of valuation, which took BP's original acquisition cost of the plant in 2000 -- $1,706,210,252 -- and adjusted that number down using a standardized depreciation schedule. Indorama filed an objection to the Commissioner's valuation with the Board. After a hearing, the Board upheld the value set by the Commissioner, leading Indorama to appeal to the Morgan Circuit Court. See §§ 40-3-24 & 40-3-25, Ala. Code 1975.[2]

The next year, Indorama filed its 2018 tax return with the Commissioner's Office. In that return, Indorama reported a total personal-property value of $280,470,266. The Commissioner rejected that return as well and assessed the total value of personal property at $442,302,752. Indorama filed an objection with the Board, which upheld the Commissioner's valuation. While its first appeal was still pending in the circuit court, Indorama filed a second notice of tax appeal there. Indorama moved to consolidate the cases, which the circuit court did.

[2]All references in this opinion to § 40-3-25, Ala. Code 1975, are to the version in effect before its recent amendment effective June 15, 2023.

B. The Evidence at Trial

The circuit court held a bench trial and heard ore tenus evidence about each party's valuation methods. The Board explained how it had valued Indorama's personal property at $449 million for the 2017 tax year and $442 million for the 2018 tax year. The county appraisers testified that they had relied on guidance from the Alabama Department of Revenue ("ADOR"), including (1) the Property Tax Plan for Equalization ("the Plan"), a comprehensive manual for appraising property for tax purposes in Alabama, and (2) the Alabama Personal Property Appraisal Manual ("the Manual"), a handbook for appraising business personal property. The Plan provides that "[f]air and reasonable market value is the basis for valuation of properties for ad valorem taxation in the State of Alabama" and calculates "fair and reasonable market value" as "'the price that property would bring at a fair voluntary sale.'" Plan, p. A-1. The Plan describes three different approaches to valuation -- cost, market, and income -- but expresses a preference for the "mass appraisal method," a standard cost approach to

valuation that considers the historical cost[3] of the property and applies a deduction using straight-line depreciation.

The Manual is a handbook created and published by ADOR "for the purpose of implementing the procedures, requirements, programs, and policies of the Department of Revenue to appraise, value, and equalize business personal property assessments in Alabama." Manual § I, p.1. The Board explained that tax assessors are required to follow the Manual, which expresses a preference for the mass-appraisal cost approach. The Manual also directs property appraisers to consider "the problem of obsolescence," which is the "reduction in value due to technological changes or innovation, changes in demand for a product, or other causes." Manual § VIII, p. 19.

Indorama responded to the appraisers' testimony by offering evidence about its valuation methods. In addition to evidence concerning its acquisition of the plant and the preparation of the PPAR, Indorama introduced expert testimony from Mark Simzyk, an experienced appraiser at Duff & Phelps. Simzyk testified that he had prepared two

[3]The Manual defines "historical cost" as "the cost of an item of personal property at the time it is bought." Manual § III, p. 2.

valuation reports for Indorama's property in 2016 and 2017. For each valuation, Simzyk considered the three standard approaches to appraisal: a sales-comparison or market approach, an income approach, and a cost approach. He explained that the sales-comparison approach was not useful in determining fair market value because of the uniqueness of the property.

Simzyk then went through the income and the cost approaches. He explained that, under the income approach to appraisal, a property's fair market value is determined by analyzing its discounted cash flow, which is the value of the cash flows that are anticipated to be generated in the future. Using this approach, Simzyk applied a 10-year discounted cash-flow analysis to determine the business-enterprise value of Indorama's plant. Simzyk then deducted portions of the business's assets, such as intangible value, working capital, and real estate, and determined that the personal-property value as of August 1, 2016, was $341,173,300.

Simzyk next explained the cost approach, an appraisal method that calculates fair and reasonable market value by using the replacement

cost with deductions for physical depreciation and obsolescence.[4] Using that approach, Simzyk estimated the total replacement cost of the property to be $2.44 billion and applied a physical depreciation discount to each piece of equipment. After deducting amounts for obsolescence, Simzyk concluded that the fair and reasonable market value of Indorama's personal property was $364,921,400 for tax year 2017 and $339,530,000 for tax year 2018.

Finally, Simzyk reconciled the values from the income and cost approaches and applied a discount for tax-exempt property. He concluded that the total value of personal property was $297,527,700 for tax year 2017 and $280,139,900 for tax year 2018.

C. The Circuit Court's Judgment

After considering all the evidence, the circuit court issued a detailed, carefully reasoned judgment that found that Indorama had met its burden of overcoming the presumption of accuracy afforded to the Board's assessment. See State Dep't of Revenue v. Birmingham Realty Co., 255 Ala. 269, 50 So. 2d 760 (1951). Consequently, the court said, the

[4]The Manual defines obsolescence as "the reduction in value due to technological changes or innovation, changes in demand for a product, or other causes." Manual § VIII, p. 19.

Board's appraisals did not reflect the fair market value of Indorama's property.

The circuit court determined the fair market value of Indorama's personal property to be $297,688,280 for tax year 2017 and $280,195,995 for tax year 2018. The circuit court explained that it had arrived at these figures by using Indorama's acquisition cost in 2016, because, the court said, that recent, voluntary sale was more indicative of the property's fair value than BP's acquisition cost in 2000, which could not be verified. The circuit court then applied a discount to the valuation for obsolescence because it found that there were challenges associated with the older facilities and outdated technology.

The circuit court later issued an amended judgment setting the total amount of refund that the Board had to pay Indorama based on the court's determination of the taxable value of the property. The court also calculated the prejudgment interest, see § 40-1-44, Ala. Code 1975, according to the "underpayment rate for large corporate underpayments" in 26 U.S.C. § 6221. Using that rate, the court awarded Indorama $348,656 for tax year 2017 and $278,708 for tax year 2018. The Board then appealed.

Standard of Review

"'[T]he ascertainment of market value of property is a factual matter,'" and "'absent a showing that the [judgment] is contrary to the great preponderance of the evidence,'" we will not reverse the circuit court's judgment. Ex parte Lake Forest Prop. Owners Ass'n, Inc., 659 So. 2d 607, 610 (Ala. 1995) (citation omitted). Further, "where a trial court has heard ore tenus testimony, as in this case, its judgment based upon that testimony is presumed correct and will be reversed only if, after consideration of the evidence and all reasonable inferences to be drawn therefrom, the judgment is found to be plainly and palpably wrong." Robinson v. Hamilton, 496 So. 2d 8, 10 (Ala. 1986). Finally, we will not overturn a trial court's ruling on the admissibility of expert witness testimony absent an "'abuse of discretion.'" Akins Funeral Home, Inc. v. Miller, 878 So. 2d 267, 270 (Ala. 2003) (citation omitted).

Analysis

On appeal, the Board attacks the circuit court's valuation methods and contends that the court erred in considering any evidence which indicated that the value of the property was less than the Board's appraised value. For the most part, the Board's arguments share the

same premise -- that the only valid method of appraisal is the mass-appraisal cost approach. But, as we explain below, that premise is false. Under Alabama law, the circuit court was entitled to consider "all the evidence," § 40-3-25, and was not restricted to any particular method of valuation. We therefore affirm the circuit court's judgment valuing Indorama's property.

In the alternative, the Board argues that the circuit court applied the wrong prejudgment interest rate under § 40-1-44 and offers its own interpretation that would reduce the amount of interest it owes. But because the Board's reading of the statute is unpersuasive, we affirm that part of the circuit court's judgment as well.

A. The Circuit Court Was Not Obligated to Follow the Manual

The Board argues that the circuit court's "overarching error" was its consideration of appraisal methods other than the Board's preferred method of calculating the fair market value of Indorama's property. Board's brief at 42. According to the Board, by applying a different method than mass appraisal, the circuit court ignored the "plain language" of the Manual in clear violation of "well-established Alabama law." Board's brief at 42-43. The Board acknowledges that the circuit

court "is admittedly not bound by ADOR's methodology in the same way as the [B]oard" and stops short of saying that the Manual completely constrains the circuit court. Board's reply brief at 17. But in the next breath, the Board contends that the circuit court was nonetheless required to defer to ADOR's view -- which, the Board says, ADOR has characterized as an "interpretation" of the Manual -- that the mass-appraisal cost approach is the only proper method of appraisal. Id. at 19. In doing so, the Board conflates ADOR's authority to interpret its own handbook with the authority to make the handbook binding on third parties.

The circuit court is not obligated to abide by the Manual or ADOR's interpretation of it because the Manual does not -- and cannot -- supersede a court's statutory obligation to determine the fair and reasonable market value of the property based on "all the evidence," § 40-3-25. The Manual is simply an administrative handbook that implements "procedures, requirements, programs, and policies of the Department of Revenue" and directs county tax officials about how to appraise property. Manual § I, p. 1. While the provisions of the Manual may bind the agency's own employees, they cannot bind third parties or

courts because they are not "'rules, regulations, or general orders of [an] administrative authority" that have "'the force of law.'" Ex parte Willbanks Health Care Serv., Inc., 986 So. 2d 422, 424-25 (2007) (citation omitted). Accordingly, the deference that courts sometimes accord agencies' interpretations of their own rules and regulations, Ex parte Board of Sch. Comm'rs of Mobile Cnty., 824 So. 3d 759 (Ala. 2001) ("Mobile County"), has no bearing on which appraisal method the circuit court was allowed to use.

In the end, the Board has provided no support for the notion that the Manual limits the authority of the circuit court to consider other appraisal methods to determine fair market value. See Board's brief at 50 (acknowledging that "county revenue officials" -- not courts -- "must follow [the Manual's] rules"). Rather, the Board's arguments contest the circuit court's determination that Indorama met its burden of proof of "show[ing] through competent evidence that the tax assessor's appraisal [was] incorrect." Lake Forest Prop. Owners Ass'n, Inc. v. Baldwin Cnty. Bd. of Equalization, 659 So. 2d 605, 606 (Ala. Civ. App. 1994), aff'd, 659 So. 2d 607 (Ala. 1995). That is a sufficiency-of-the-evidence challenge, to which we now turn.

B. The Evidence Supports the Circuit Court's Judgment

1. The PPAR

The Board first contends that the circuit court erred in relying on the PPAR in calculating the fair market value of Indorama's property. According to the Board, because the PPAR was done for "financial reporting purposes," the PPAR's estimation of the property's "fair value" is not equivalent to or evidence of the property's "fair and reasonable market value," as referenced in Art. XI, § 217(b), Ala. Const. 2022.

But the difference between "fair value" and "fair and reasonable market value" is semantic, not substantive. As the circuit court pointed out, the PPAR's definition of "fair value" is strikingly similar to both the definition of "value" in § 40-1-1(16), Ala. Code 1975, and our precedent interpreting the predecessor to Art. XI, § 217(b), Ala. Const. 2022. The circuit court found that the PPAR was prepared according to the International Financial Reporting Standards, which defines "fair value" as "the amount for which an asset could be exchanged … between knowledgeable, willing parties in an arm's length transaction." Section 40-1-1(16) defines "value" as "[t]he fair and reasonable market value of property, estimated at the price which the property would bring at a fair

voluntary sale." And this Court has previously said that "'fair market value'" means "'"the sum arrived at by fair negotiation between an owner willing to sell and a purchaser willing to buy, neither being under pressure to do so."'" Mt. Carmel Estates, Inc. v. Regions Bank, 853 So. 2d 160, 166 (Ala. 2002) (citations omitted); see also Ex parte Barron Servs., Inc., 874 So. 2d 545, 550 n. 6 (Ala. 2003) (defining "fair market value" as "'[t]he amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts'" (quoting Black's Law Dictionary 597 (6th ed. 1990))). It was therefore not "clearly erroneous" for the circuit court to rely on the PPAR's calculation of "fair value" in determining the "fair and reasonable market value" of Indorama's property. Hall v. Mazzone, 486 So. 2d 408, 411 (Ala. 1986).

2. Simzyk's Testimony

Next, the Board argues that the circuit court erred by admitting the expert testimony of Mark Simzyk, Indorama's property appraiser for the tax years 2017 and 2018. The Board says that Simzyk's testimony did not satisfy Rule 702(a), Ala. R. Evid., which allows the admission of

expert testimony if it is both "based on sufficient facts or data" and "the product of reliable principles and methods," and the witness has applied those principles and methods to the case. Because, in the Board's view, Simzyk's income approach to appraisal was "indisputably wrong" and "deeply flawed," the Board argues that the circuit court should have excluded his testimony. Board's brief at 64.

But the Board's assertions are conclusory and do not demonstrate that the circuit court's decision to allow Simzyk to testify as an expert was an "abuse of discretion." Hannah v. Gregg, Bland & Berry, Inc., 840 So. 2d 839, 850 (Ala. 2002). Once again, the Board's argument hinges on the false premise that any appraisal approach other than the Board's mass-appraisal cost method violates Alabama law.

Contrary to the Board's repeated declarations, Alabama law does not prohibit appraisers from using other methods of valuation, such as the income approach that Simzyk used. First, nothing in the text of Art. XI, § 217, Ala. Const. 2022, or § 40-3-25 specifies one approach to valuation. Second, as the circuit court pointed out and the Board acknowledges, ADOR has not mandated the use of a particular approach. While ADOR has expressed a preference for the mass-appraisal cost

method, the Plan -- which ADOR issued to county tax appraisers as a guide for determining "[f]air and reasonable market value" -- expressly permits three types of valuation: cost, market, and income.[5] Finally, the Manual expressly contemplates that tax assessors will use other methods of appraising property. For example, § XI, p. 24, of the Manual says that it "is not all inclusive" and that "[a]ny other guides or sources of information that provide market values of personal property may be used …." By its own terms, then, the Manual recognizes that appraisers such as Simzyk have discretion to consider other factors such as the income of the property.

The Board tries to explain away the Manual's plain language by arguing that ADOR has interpreted "other guides or sources of information" to mean "only memorandums and guidance from ADOR." Board's brief at 9-10. According to the Board, because Simzyk used external sources of information in his valuation approach, and because courts must defer to an agency's interpretation of its own policies under

[5]In fact, the Plan requires tax assessors to be trained in all three approaches -- cost, market, and income -- to value property. The Board also acknowledged that it had previously hired tax assessors who used valuation methods other than the mass-appraisal cost approach.

Mobile County, the circuit court should have excluded Simzyk's testimony.

The Board's invocation of deference under Mobile County is misplaced. Mobile County and other cases recognize that this deference has limits where, as here, "the agency's interpretation is unreasonable or unsupported by the law." Alabama Dep't of Revenue v. American Equity Inv. Life Ins. Co., 169 So. 3d 1069, 1074 (Ala. Civ. App. 2015) (citing Ex parte State Dep't of Revenue, 683 So. 2d 980, 983 (Ala. 1996)). The expansive language of the Manual -- "[a]ny other guides or sources of information" -- cannot accommodate the cramped reading that ADOR has given it. Manual § XI, p. 24. And as Indorama points out, such an interpretation also contradicts other sections of the Manual, which instruct appraisers "to look to the market for any evidence of loss of value due to obsolescence" and "to always consider what an informed purchaser would be willing to pay for the property." Manual § X, p. 19. These other sources of information are plainly external to the Manual and ADOR's bulletins. Consequently, the circuit court's rejection of ADOR's interpretation was not error.

Next, the Board argues that Simzyk's income approach is inconsistent with Board for Assessment of Property of Railroad Cos. v. Alabama Central Railroad Co., 59 Ala. 551 (1877) ("Alabama Central"), which held that "[t]he value of property, not its income, is the standard on which an [appraisal] must be based" and that there can be "no discrimination and no distinction between the [appraisal of] property of individuals and corporations." Id. at 555-57. The Board concludes from these excerpts that Alabama law categorically bars the consideration of income in property appraisals.

The Board misreads Alabama Central. The issue in that case was whether an 1867 statute that mandated an income-based method of calculating the minimum taxable value of property of railroad companies was constitutional. Our Court said no, because the statutory scheme clearly discriminated against railroad companies by assigning their properties -- and only their properties -- an "arbitrary or artificial value" based solely on income. Id. at 557. But this Court did not say that the Alabama Constitution or any other law categorically barred any consideration of income in property appraisals. On the contrary, as Indorama points out, the Alabama Central Court acknowledged the

relevance of income to the appraisal of property. See, e.g., id. at 556 (noting that "the uses for which [the property] is employed" and "the profit which may be derived from [the property]" are legitimate considerations in property appraisals).

Finally, the Board gets even more granular, arguing that the discounted cash-flow analysis Simzyk used as part of the income approach violates several statutes requiring that "each item of property is to be listed and assessed separately for purposes of ad valorem taxation." Board's brief at 57. But the statutes on which the Board relies do not say that discounted cash flow may not be used to calculate the income that a property generates. Rather, §§ 40-7-6 and 40-7-14, Ala. Code 1975, say that tax assessors must obtain a list of each item of property exempt from taxation, and § 40-7-6 specifically provides that taxpayers must "give an estimate of the value of each item of personal property." In fact, the very next section that the Board cites requires tax assessors to ascertain the fair and reasonable market value of each item of property based on the "information entered on the tax return list and from all other information known to him or her." § 40-7-25, Ala. Code

1975.[6] And the final statute cited by the Board mandates that ADOR design a nonitemized business personal-property short-form tax return for taxpayers. See § 40-7-55, Ala. Code 1975. None of these statutes say anything about discounted cash flow or otherwise hint that Simzyk's income-based approach was impermissible.

The upshot is that Simzyk's appraisal methods were not "contrary to Alabama law." Board's brief at 64. Consequently, the Board's reliance on City of Cullman v. Moyer, 594 So. 2d 70 (Ala. 1992), and State v. Cooper, 420 So. 2d 771 (Ala. 1982), is misplaced because those cases only held that expert testimony based on illegal appraisal methods is inadmissible under Rule 703.[7] The circuit court did not exceed its

[6]Section 40-7-25 was amended effective June 15, 2023. The quoted language is in both the current version and the preamendment version of the statute.

[7]The Board also looks to several Mississippi cases in which the courts there have excluded the testimony of appraisers who used methods other than the cost approach. But those cases are inapposite because Mississippi's law gives the Mississippi Department of Revenue the power to choose one of three appraisal methods and set that as binding law on all tax assessors. See Miss. Code Ann. § 27-35-50(2). By contrast, there is no Alabama law that vests ADOR with that same authority, nor does ADOR claim that the mass-appraisal cost approach is the only valid method of appraisal.

discretion in determining that Simzyk was an expert witness, and the court was therefore entitled to consider his testimony in determining the fair market value of Indorama's property.

3. Indorama's Sale Price

The Board next argues that the circuit court erred by considering the sale price of the plant between BP and Indorama in determining the fair market value of Indorama's personal property. Instead, the Board says, the circuit court should have used the "original" or "historic" cost because original cost has been "the primary cost basis used for valuing property in a wide variety of contexts." Board's brief at 60. The Board lists a handful of statutes and cases that used original cost to value different types of property; but the Board does not explain how those examples demonstrate that the circuit court's reliance on the sale price was "an error of law." Board's brief at 61.[8]

In addition, there was substantial evidence to support the circuit court's use of the sale price to determine fair market value. The circuit court found that the sale between BP and Indorama was an arm's-length

[8]In fact, Jennifer Byrd, the Assistant Director of Property Tax for ADOR, conceded at trial that "the sale of a property could be an indicator of value."

transaction. As a result, the court concluded that the transaction bore on the fair market value.

The circuit court also provided a thorough explanation of why it was not using the historic cost, which was the price that BP had paid when it first acquired the plant. First, the court noted that BP's acquisition cost might have been "arrived at in error" because it was not verified by a certification of accuracy, which the Manual requires. Second, the court said that using the historic cost would require Indorama to pay the personal-property tax on BP's acquisition cost, which was nearly 1.5 times higher than Indorama's acquisition cost. Finally, the court said, even if the Manual did control, the sale-price approach to valuation was more consistent with the Manual because the Manual defines "market value" as "the highest price for which a property would sell, if the sale occurred under satisfactory conditions for all parties to the transaction." Manual § III, p. 2. The circuit court was correct in its reasoning and therefore did not err in considering the "recent voluntary sale" as a measure of fair market value.

4. Obsolescence

The Board next argues that Indorama did not put forth adequate evidence of obsolescence, which the Board says that Indorama manipulated in order to artificially lower its property value. Consequently, the Board says, the circuit court erred in finding that the fair market value of the property was less than the amount reached by the Board's appraisers. Board's brief at 68.

But this sufficiency-of-the-evidence challenge does not hold water either. The circuit court found that there was substantial evidence of obsolescence, including the reduction in sale price, the reduced demand for Indorama's products, and the challenges of producing petrochemical products in older facilities and with outdated technology. The Board, by contrast, failed to factor any obsolescence into its appraisal, contrary to the Manual's mandate that obsolescence "must be considered in estimating value." Manual § VIII, p. 19; see also id. at 20 (instructing appraisers to "look to the market for any evidence of loss of value due to obsolescence"). The Board attempts to sidestep the issue by once again faulting the circuit court for failing to defer to "ADOR's interpretation" of its obsolescence procedures. Board's brief at 51. In doing so, however,

Board elides the distinction between an agency's interpretation of its own policies -- which sometimes receives deference, see Mobile County, 824 So. 2d at 761 -- and the Board's intentional decision not to calculate obsolescence in appraising Indorama's property, which does not. In the end, the Board can only say that the circuit court used an "inconsistent, results-driven approach." Board's brief at 68. That assertion does not override the substantial evidence of obsolescence on which the circuit court was entitled to rely.

C. The Circuit Court Applied the Correct Prejudgment-Interest Rate

In the alternative, the Board argues that the circuit court erred in calculating the prejudgment-interest rate because the court used the corporate underpayment rate, rather than the general underpayment rate, in 26 U.S.C. § 6621.

Before addressing this argument, it is necessary to survey the statutory scheme that Alabama uses to calculate prejudgment-interest rates in tax cases. Section 40-1-44 sets forth the rates for prejudgment interest on delinquent taxes ("underpayments") and overpaid taxes ("overpayments"). Subsection (a) provides that the interest rate for underpayments "shall be computed based on the underpayment rate

established by the Secretary of the Treasury under the authority of 26 U.S.C. § 6621." Subsection (b) provides that the interest rate for overpayments "shall be computed as the same rate as provided herein for interest on underpayments." The result is that, in Alabama, the prejudgment-interest rate for both underpayments and overpayments is calculated according "the underpayment rate established by the Secretary of the Treasury under the authority of 26 U.S.C. § 6621." § 40-1-44(a). Section 6621, in turn, contains two underpayment rates. There is a general "underpayment rate" in subsection (a)(2), which is "the Federal short-term rate … plus … 3 percentage points," and an "underpayment rate" for large corporations in subsection (c)(1), which is the federal short-term rate plus five percentage points.

The issue here is whether § 40-1-44 incorporates both underpayment rates, as Indorama argues, or only the general underpayment rate, as the Board contends. When confronted with these competing interpretations, the circuit court agreed with Indorama, reasoning that "when read as a whole and in conjunction with 26 U.S.C. § 6621, the 'underpayment rate established by the Secretary of the Treasury' would mean the applicable underpayment rate," which the

court found to be "the 'underpayment rate for large corporate underpayments.'" (Emphasis added.)

The Board contends that the circuit court amended the statute by reading the statutory phrase "the underpayment rate" as if it instead said "the applicable underpayment rate." The Board insists that any such interpretation is improper, arguing that "the underpayment rate" in § 40-1-44 unambiguously refers to the general underpayment rate in subsection (a)(2) of § 6621. (Emphasis added.) We disagree.

At the outset, it is worth noting that the Board's interpretation also has the effect of inserting an extra word into the statute. Whereas the circuit court's order reads "the underpayment rate" to mean "the applicable underpayment rate," the Board reads that phrase as if it said "the first underpayment rate." That is because the Board's interpretation hinges on its view that § 40-1-44 incorporates only subsection (a)(2) -- the first and more general rate for underpayments -- not subsection (c)(1) -- the second rate that is specific to large corporations.

The Board's interpretation is less plausible than the circuit court's. Section 40-1-44 does not reference any specific subsection of § 6621. Instead, it incorporates the entire section by reference to whatever rate

is set by "the authority" of the Secretary of the Treasury "under 26 U.S.C. § 6621." § 40-1-44. This phrasing demonstrates that the statute is not incorporating "the rate [set by a particular provision of § 6621]," as the Board contends. Rather, it incorporates "the rate [set by whatever authority is invoked under the provision]." The Legislature's careful choice of words indicates, as the circuit court recognized, that, in the case of multiple rates, it is "the [applicable] rate" that applies. Section 40-1-44 thus incorporates both underpayment rates, and the circuit court did not err in applying the corporate rate to the prejudgment interest on Indorama's overpayment.

Conclusion

The Board has not demonstrated that the circuit court's determination of the fair market value of Indorama's property was "'contrary to the great preponderance of evidence.'" Lake Forest, 659 So. 2d at 610. We therefore affirm the court's judgment.

SC-2023-0183 -- AFFIRMED.

SC-2023-0184 -- AFFIRMED.

Parker, C.J., and Shaw, Bryan, and Mendheim, JJ., concur.